IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

GABRIEL LEAL,
d/b/a as GE Wireless,

       Plaintiff,

v.   1:23-cv-01121-LF-SCY

OHIO SECURITY
INSURANCE COMPANY,

       Defendant.

ORDER GRANTING PARTIAL MOTION TO DISMISS

THIS MATTER came before the Court on Defendant's Motion to Dismiss for Failure to State a Claim Count IV of Complaint (Doc. 2), filed December 18, 2023. Plaintiff did not file a response. Having considered the motion and the relevant law, I find that Plaintiff has consented to the motion and GRANT it.

In its motion, Defendant argues that Count IV of Plaintiff's complaint, "Intentional Infliction of Emotional Distress," pleads a cause of action that is "not recognized under New Mexico law in the context of this insurance case . . . ." Doc. 2 at 2; Doc. 1-1 at 17–18. Because Plaintiff did not respond to this motion, I do not consider the substance of this argument. Responses to motions "must be served within fourteen (14) calendar days after service of the motion." D.N.M.LR-Civ. 7.4(a). A party's failure to serve a timely response to a motion "constitutes consent to grant the motion." D.N.M.LR-Civ. 7.1(b). "[L]ocal rules of practice, as adopted by the district court, 'have the force and effect of law, and are binding upon the parties and the court which promulgated them until they are changed in appropriate manner.' " *Smith v.*

Ford Motor Co., 626 F.2d 784, 796 (10th Cir. 1980). Although summary judgment motions

cannot be conceded based on a failure to file a response, *see Reed v. Bennet*t, 312 F.3d 1190,

1195 (10th Cir. 2002), local rule 7.1(b) applies to motions to dismiss. *Rubin v. Jenkusky*, 1:13-

cv-00047-RB-WPL, 2013 WL 11327111, at *1 (D.N.M. July 8, 2013) (unpublished) (citing

Lopez v. Am. Express Centurion Bank, 1:13-cv-00357-PJK-LFG, Doc. 32 (D.N.M. June 7,

2013)). Plaintiff therefore has consented to Defendant's partial Motion to Dismiss.

   IT IS THEREFORE ORDERED THAT Count IV of Plaintiff's Complaint is dismissed

with prejudice.

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Laura Fashing
United States Magistrate Judge
Presiding by Consent